

REMARKS

In response to the Restriction Requirement set forth in the outstanding Office Action, Applicants hereby provisionally elect, with traverse, the invention of Group I, claims 1-3 (drawn to a *Streptomyces cyaneogriseus* strain that can produce C-13 glycosylated nemadectin).

Applicants respectfully request withdrawal of the Restriction Requirement for the following reasons.

First, Applicants note the present application is a 371 national stage application of International Application PCT/JP03/07407. As such, and pursuant to 37 C.F.R. § 1.499, unity of invention is considered for a national stage application that is described by 37 C.F.R. § 1.475. Moreover, it is noted that in applying this legal standard, the International Searching Authority did not find unity of invention as lacking, and thus, all claims were searched and unity was not indicated as lacking. In this regard, we refer you to the PCT/ISA/210 Form. Thus, since the Patent Office has the benefit of the International Search Report, the Patent Office should follow the International Searching Authority and find that unity of invention exists.

In addition, Applicants respectfully submit that contrary to the Office's position, the claims do have a common inventive concept shared among the Groups I-VII, as these groups have a special technical feature over the prior art. The Office relied on DORCHIES et al. as disclosing *Streptomyces cyaneogriseus*

strains capable of producing nemadectin. Applicants respectfully disagree and submit that DORCHIES et al. do not teach the claimed *Streptomyces cyaneogriseus* subspecies noncyanogenus having the ability to produce C-13 glycosidated nemadectin of the claimed invention.

For these reasons, it is respectfully submitted that the Office's determination of lack of unity is improper and should be withdrawn. Thus, it is believed that Applicants are entitled to an action on the merits of all pending claims, in their full scope, in the present application. Favorable action on the merits is solicited.

In the event that the Office disagrees with the traversal and maintains the requirement, kindly consider the possibility of rejoinder of the non-elected invention upon a determination of allowance of elected invention, in accordance with U.S. practice, if applicable.

If the Office has any suggestions to expedite prosecution, please contact the undersigned attorney at the telephone number below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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